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STATE FOR VCI/CCA, EUR/RPM
NSC FOR HAYES
JCS FOR J5/COL NORWOOD
OSD FOR ISA (PERENYI)

E.O. 12958: DECL: 05/20/2018
TAGS: [KCFE](#) [OSCE](#) [PARM](#) [PREL](#) [RS](#)
SUBJECT: CFE/JCG DECEMBER 9 PLENARY: LEGAL ANALYSIS

REFUTES RUSSIAN CLAIMS; OLD RF PROPOSAL RECYCLED

REF: STATE 128974

Classified By: Chief Arms Control Delegate Hugh Neighbour,
for reasons 1.4(b) and (d).

¶1. (C) Summary: At the December 9 Joint Consultative Group (JCG) plenary, the U.S. provided a legal analysis refuting Russia's repeated assertions that it has a legal basis for its "suspension" of the CFE Treaty. This was important to clear the air on this issue after repeated Russian challenges to the Allies, and U.S. in particular. Russia also recycled an earlier appeal for further discussions on how the JCG can contribute to a creative solution on the CFE impasse. He quoted from Russian Foreign Minister Lavrov's comments at the Helsinki OSCE Ministerial that it is not just up to Moscow and Washington to salvage CFE - all States Parties should be involved, and the JCG is the best place to elaborate a collective viewpoint. In particular, the JCG should work on details of the parallel package to support the Fried-Antonov channel. France and the UK made strong remarks reminding Russia that it is responsible for the current situation, and events at the Ministerial did not help put the Treaty back on track. France mentioned that the high-level consultations will resume on December 17 between A/S Fried and Antonov, and does not want the JCG to risk undermining that process. Germany reiterated Foreign Minister Steinmeier's proposal at Helsinki to host a high-level CFE meeting next summer but provided no new details. End Summary.

No Legal Basis for Suspension

¶2. (SBU) The U.S. (Neighbour) provided a statement on the U.S. legal analysis of Russia's claim that there is a legal basis for its suspension of CFE Treaty obligations under the CFE Treaty or customary international law (reftel). Neighbour also attached the Department's legal analysis in reply to Russia's assertions to the JCG journal. The Russian response was gracious. Russia (Ulyanov) thanked the U.S. for providing the analysis and undertook to forward it to Moscow for detailed review. He said it offered the start of a real dialogue. He clarified that Russia has never said the Vienna Convention is a basis for the moratorium but is rather

the greater/lesser principle implied. He also cautioned that those that continue to question Russia's right to suspend from the Treaty may force its actual withdrawal instead.

13. (SBU) Romania (Mihai) recalled its Note Verbale of 11 December 2007 regarding Russia's legal claim for suspension, and it continues to stand by the position as distributed by the Depositary to all States Parties. The Czech Republic (Reinohlova) also recalled its Note Verbale number 330 of May 19, 2008, that states its position objecting to Russia's suspension. The Treaty does not allow it, the Czech position remains the unchanged, and Russia's position lacks legal justification. UK (Hartnell) also recalled that its legal position had been recorded in a Note Verbale.

14. (C) Germany (Richter) soft-peddled by saying discussion of legal interpretations do not really help to move forward toward a solution. Rather, we should focus our dialogue on how to overcome the impasse. A political approach is needed versus a legal debate. Before the meeting, however, he told us that Germany fully agreed with the need for the U.S. to reply to Russia's repeated challenges to the Allies, and U.S. in particular, on this issue.

JCG Should Be Involved

15. (SBU) Russian Ambassador Ulyanov made a lengthy statement aimed at prompting further discussion on how the JCG could contribute to a constructive solution to the CFE impasse. The JCG is not just a supplement to U.S.-Russian bilateral relations, but is important for reaching mutual effective solutions. The JCG's multilateral format allows all parties

to participate. As FonMin Lavrov said in Helsinki, salvaging CFE is not just up to Moscow and Washington - we are not in a cold war anymore. We have equality and democracy in international affairs - this subject is not just for two capitals alone.

16. (SBU) Ulyanov noted that six days ago, the NAC Communique was agreed, and paragraph 34 ends with important words, "We urge Russia to work cooperatively with us and other concerned CFE States Parties to reach agreement on the basis of the parallel actions package so that together we can preserve the benefits of this landmark regime." Russia couldn't have put it better itself. Russia has been appealing to the Alliance for such cooperation for over a year and it seems that our positions are now starting to come together. The only place that can happen is in the JCG. The only question is how does NATO propose to organize the JCG's work per the NAC statement, especially in light of Moldova and Ukrainian alignment with the statement.

17. (SBU) Russia has three points for consideration: 1) the parallel package could serve as the basis for JCG work. As Minister Lavrov said, the parallel package is an outline of what Russia has done in contrast to the amorphous NATO promises of action. The package needs to outline the actions NATO will take; 2) the JCG is capable and should by rights make its own contribution. It's hard to rely on the busy schedules of high-level Moscow/Washington reps to discuss the details, e.g., defining substantial combat forces; modalities of new participants (Baltics, Slovenia, even Albania and Croatia as pending NATO members); and provisional application of a/CFE. 3) The package needs to be considered as a whole - if we tackle element by element Russia understands that nothing is agreed until all is agreed. This would prevent fragmentation.

18. (SBU) Ulyanov stressed that Russia's proposals are aimed at expediting the process. There is no hidden agenda. Russia hopes for a constructive response. He emphasized Russia's proposal for a JCG effort is to support the Fried-Antonov channel, not undercut it. Russia believes the NAC Ministers urged the same approach. (text in Journal)

Not Until the Parallel Package is Agreed

¶9. (SBU) France (Simonet) replied forcefully by noting the current situation is one of Russia,s own making by way of its decision to suspend itself from the Treaty. Events at the OSCE Ministerial last week did not help to put it back on track. On December 17th the high-level talks will resume in Geneva. Launching into a JCG discussion on the parallel package now could risk undermining that process. He pointed out that Russia has yet to reply to the NAC March 28 statement. As Russia knows, this statement is the basis to move forward. Let,s not muddle the order of things. France is awaiting the outcome of the high level discussions.

¶10. (SBU) The UK rep (Gare) supported the French intervention. Comments regarding the erosion of the Treaty could be reversed if Russia stopped its suspension. She welcomed Russia,s desire for information exchange and urged them to engage on the CFE Treaty exchange on December 15.

¶11. (SBU) Germany (Richter) recalled that the need for the adapted Treaty has been confirmed by all. For this reason, Foreign Minister Steinmeier announced at Helsinki plans to invite high-ranking experts for a meeting in early summer. Germany is convinced of the need for a new beginning in order to stop further erosion. We need to retain CFE - it has proved its value. We need to continue building opportunities for a comprehensive effort in an inclusive way. The December 3 NAC statement urges Russia to do its part. Germany is glad the high-level bilaterals will happen soon. (text in Journal)

¶12. (SBU) The U.S. (Neighbour) said the Russian statement shows that it shares our desire to end the impasse. However, he expressed concern that Russia,s proposal again is to cherry-pick parts of the package deal and disaggregate it. The package as discussed between Fried-Antonov does not allow for piecemeal discussions on parts of the package. Citing the NAC,s 28 March statement which had been affirmed as recently as 3 December, Neighbour noted that it said that only "upon agreement between NATO and Russia on the package" would NATO work with Russia to develop a definition of "substantial combat forces" or discuss conditions for accession.

Russia,s New Chorus line

¶13. (SBU) Belarus (Krayushkin) welcomed Russia,s proposal for further JCG work. Belarus ratified adapted CFE in 2000 and is waiting for others to do so. Belarus is convinced the JCG is the right place to discuss the parallel plan. Kazakhstan (Bekov) also supports Russia,s position to use the JCG. Kazakhstan ratified the adapted Treaty in 2003. The JCG has the right expertise - why waste time elsewhere?

¶14. (C) Armenia considers the Treaty of real value, unfortunately it is under a cloud with no sign of recovery and events in Helsinki were not encouraging. Not clear yet what the impact is of having the current Treaty suspended, and the adapted one not yet in place. Armenia is open to discussion in the JCG if that would help, and since it does not belong to another group (NATO), it is the only fora available. Perhaps a two-track approach may help build understanding - JCG and the high-level bilats. Comment: Armenia,s statement was more measured than the cheerleading statements of Belarus and Kazakhstan. He told us he got his instructions to intervene the same morning of the meeting, and that Yerevan was very specific on what he should say. This was the first time in memory that Russia had orchestrated a chorus line of support consisting of more than one del speaking in support of it. End Comment.

¶15. (SBU) Russia (Ulyanov) regretted that France, UK, and U.S. are not prepared to proceed in the JCG as supported by Belarus, Kazakhstan, and Armenia. It appears the NATO states do not take Russian concerns seriously, and are not really prepared to take-up the cooperation called for in the NAC December 3 statement (paragraph 34). Russia is in no hurry,

the moratorium is still in place. Russia has been waiting since April 2007, when former President Putin invited NATO for intense dialogue on the subject. Russia urged the U.S. to take the offer for dialogue seriously, not merely give it lip service. Ulyanov quoted from a Russian MFA press release on official reactions to paragraph 34 in line with his many previous statements. The parallel plan "needs serious further elaboration." Russia is amazed that paragraph 34 calls on Russia to be cooperative when Russia has been urging such cooperation itself since the Extraordinary Conference in June 2007. NATO is the one that has been passive. Apparently this NAC statement is open to multiple interpretations. Russia would really like to believe that it will hear something constructive on December 17.

¶16. (SBU) Germany (Richter) took issue with Russia's claim that NATO has been passive. Germany and France both hosted special meetings last year in an effort to move forward. He noted the events in Georgia this summer certainly did not help the process. Ulyanov appreciated that Germany takes the subject seriously, but it is not interested in the actions of individual countries, but the Alliance as a whole. NATO has been passive for one and a half years, the JRC has stopped meeting, and NATO is reluctant to use the JCG, etc. There have been only three senior bilateral meetings this year. The days when Washington and Moscow can call all the shots are long gone. Russia is prepared to do what is in the December 3 NAC Communiqué.

OSCE Amb,s See Helsinki as Signal to Talk Sarko-Med

¶17. (C) Meanwhile, at the NATO Caucus on December 10, a number of ambassadors expressed the view that the ministerial lunch in Helsinki gave them the signal to kick off discussions in Vienna on the way forward on European security, including (but not limited to) the Sarkozy-Medvedev proposals. They believe the process should be in Vienna, acknowledging the importance for policy coordination in Brussels at NATO. The French, however, pointedly noted the importance of coordination in Brussels at the EU as well. The French will be promoting early OSCE follow-up for Sarko-Med proposals. Some delegations, particularly the British, have joined us in saying NATO countries need to focus on "why" first. USDel stressed the positions we took in discussions at the NATO Ministerial, i.e. Vienna is the place for talks, but NATO should coordinate positions in advance.

¶18. (U) The next and last meeting of the JCG in the current session will be December 16 under the chairmanship of Slovakia.
FINLEY